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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/482,691	01/13/00	POLICICCHIO	N 6553D

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EXAMINER

SPISICH, M

ART UNIT	PAPER NUMBER
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1744

4

DATE MAILED:

05/25/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
09/482,691

Applicant(s)  
Policicchio et al

Examiner  
Mark Spisich

Group Art Unit  
1744



☐ Responsive to communication(s) filed on \_\_\_\_\_

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 21-23, 25-27, 29, and 32-35 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 21-23, 25-27, 29, and 32-35 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1744

## DETAILED ACTION

### *Notice of Informal Examiner's Amendment*

1. (1) "203" (page 22, line 21) has been changed to -- 205 --; (2) "203" and "205" (page 22, line 22) have been changed to -- 205 -- and -- 203 --, respectively; (3) "205" (page 22, line 26) (both occurrences) has been changed to -- 203 --.

### *Claim Rejections - 35 USC § 112*

2. Claims 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 25 and 26 each are dependent on a deleted claim (#24), which results in the "superabsorbent material" (claim 25, line 3 and claim 26, lines 1-2) lacking antecedent.

Applicant should review the claims for any additional informalities.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1744

4. Claims 21-23,25-27,29 and 32-35 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-3,5-20,31,38-45,47,48 and 50-63 of copending Application No. 09/037,379. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a cleaning implement having multiple widths in the z-direction and having a handle and cleaning pad.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1744

6. Claims 27 and 32-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Statler (USP 2,842,791).

7. Claims 21,22,27 and 32-35 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Nichols (USP 5,609,255).

8. Claims 27 and 32-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Casademunt Ferre et al (USP 5,115,535).

9. Claims 27,29 and 33 are rejected under 35 U.S.C. 102(a) as being anticipated by Brown, Jr. (USP 5,533,226). The patent to Brown discloses a cleaning implement comprising a handle (66) and a removable cleaning pad having an upper and a lower surface having multiple widths in the "z-direction" (see figure 6) and wherein the pad comprises a scrubbing layer (5) and wherein the lower surface of the pad comprises three discrete surfaces (42,44,46) each of which contact the surface being cleaned. The layer of adhesive (64) reads on the attachment layer of claim 33.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 23,25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (USP 5,609,255) in view of Newell (USP 4,995,133). The patent to Nichols discloses a cleaning implement (10) comprising a handle (12) and a removable cleaning pad (28) having

Art Unit: 1744

opposite upper and lower surfaces and multiple widths in the “z-direction” and wherein the cleaning pad is comprised of an absorbent layer (32,34), scrubbing layer (36) and an impervious attachment layer (38). The patent to Nichols discloses the invention substantially as claimed with the exception of the absorbent layer comprising a superabsorbent material. The patent to Newell discloses a cleaning device having similar utility wherein the absorbent elements thereof may be comprised of any fibrous material such as rayon, cotton and polyester (see column 11, lines 24-34) which may further have incorporated therein any suitable type of super-absorbents, hydrogels which are commercially available (See column 12, lines 1-16). It would have been obvious to one of ordinary skill to have modified the absorbent layer of Nichols as such so, if so desired, to produce a single-use mop application. The particular ratios between the fibrous material and the superabsorbent material is believed to be obvious to one of ordinary skill in the art so that the desired properties could be matched to the intended use. Again, Newell states that *any known* superabsorbent can be used. The specification of the present invention discloses what appears to be a similar embodiment. It would not be unreasonable for one to assume that the material of Newell would have similar properties as that claimed given the fact that the composition is very nearly (if not the same) as one of the embodiments of the present invention. One of ordinary skill would deem it obvious to modified the relative proportion of the cotton relative to the superabsorbent to arrive at the desired properties. Optimizing a prior art device through routine experimentation is not a patentable step.

Art Unit: 1744

*Conclusion*

12. This is a division/continuation (drawn to the same invention) of applicant's earlier Application No. 09/037,379. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271.



Mark Spisich

May 24, 2000

MARK SPISICH  
PRIMARY EXAMINER  
GROUP 3400  
1700